

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES E. WILLIAMS,

Plaintiff,

v.

R. MACK,

Defendant.

No. C 13-4820 RMW (PR)

ORDER DIRECTING CLERK TO  
SERVE DEFENDANT MACK

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. The court ordered service of plaintiff's civil rights complaint upon defendant. A notice of lawsuit and request for waiver of service of summons was mailed to the defendant at Salinas Valley State Prison ("SVSP"). On March 3, 2014, the documents were returned with a notation that the defendant was no longer at the institution. (Docket No. 9.) On August 21, 2014, the court requested that the SVSP Litigation Coordinator provide to the court the current employment status for defendant R. Mack, and any available forwarding addresses, or notice that such information is not available. (Docket No. 13.) On August 27, 2014, SVSP Litigation Coordinator K. McKelroy filed a notice with the court indicating that the institution had been "in recent contact with R. Mack" and that the summons and complaint should be resent to the institution. (Docket No. 14.) Given this information, the court directs the clerk of the court to

1 serve defendant R. Mack.

2 **CONCLUSION**

3 For the foregoing reasons, the court hereby orders as follows:

4 1. The clerk of the court shall mail a Notice of Lawsuit and Request for Waiver of  
5 Service of Summons, two copies of the Waiver of Service of Summons, a copy of the complaint  
6 and all attachments thereto (docket no. 1), and a copy of this order to **Dr. R. Mack at Salinas**  
7 **Valley State Prison, P.O. Box 1020, Soledad, CA 93960, Attention Litigation Coordinator**  
8 **K. McKelroy.**

9 The clerk of the court shall also mail a courtesy copy of the complaint and a copy of this  
10 order to the California Attorney General's Office. Additionally, the clerk shall mail a copy of  
11 this order to plaintiff.

12 2. Defendant is cautioned that Rule 4 of the Federal Rules of Civil Procedure  
13 requires them to cooperate in saving unnecessary costs of service of the summons and complaint.  
14 Pursuant to Rule 4, if defendant, after being notified of this action and asked by the court, on  
15 behalf of plaintiff, to waive service of the summons, fails to do so, he will be required to bear the  
16 cost of such service unless good cause is shown for their failure to sign and return the waiver  
17 form. If service is waived, this action will proceed as if defendant had been served on the date  
18 that the waiver is filed, except that pursuant to Rule 12(a)(1)(B), defendant will not be required  
19 to serve and file an answer before sixty (60) days from the date on which the request for waiver  
20 was sent. (This allows a longer time to respond than would be required if formal service of  
21 summons is necessary.) Defendant is asked to read the statement set forth at the bottom of the  
22 waiver form that more completely describes the duties of the parties with regard to waiver of  
23 service of the summons. If service is waived after the date provided in the Notice but before  
24 defendants have been personally served, the Answer shall be due sixty (60) days from the date  
25 on which the request for waiver was sent or twenty (20) days from the date the waiver form is  
26 filed, whichever is later.

27 3. No later than **sixty (60) days** from the date on which the request for waiver was  
28 sent, defendant shall file a motion for summary judgment or other dispositive motion with

respect to the cognizable claim in the complaint. Any motion for summary judgment shall be supported by adequate factual documentation and shall conform in all respects to Rule 56 of the Federal Rules of Civil Procedure. **Defendant is advised that summary judgment cannot be granted, nor qualified immunity found, if material facts are in dispute. If defendant is of the opinion that this case cannot be resolved by summary judgment, he shall so inform the court prior to the date the summary judgment motion is due.**

4. Plaintiff's opposition to the dispositive motion shall be filed with the court and served on defendant no later than **twenty-eight (28) days** from the date defendant's motion is filed. Plaintiff is advised to read Rule 56 of the Federal Rules of Civil Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986) (holding party opposing summary judgment must come forward with evidence showing triable issues of material fact on every essential element of his claim).

5. Defendant shall file a reply brief no later than **fourteen (14) days** after plaintiff's opposition is filed.

6. The motion shall be deemed submitted as of the date the reply brief is due. No hearing will be held on the motion unless the court so orders at a later date.

7. All communications by the plaintiff with the court must be served on defendant or defendant's counsel, by mailing a true copy of the document to defendant or defendant's counsel.

8. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. No further court order is required before the parties may conduct discovery.

9. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the court and all parties informed of any change of address and must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

DATED: JED EF



RONALD M. WHYTE

Wj æ å Åæ • Öä ç ÆÖ å\* ^

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

JAMES E. WILLIAMS et al,  
Plaintiff,

Case Number: CV13-04820 RMW

**CERTIFICATE OF SERVICE**

v.

R. MACK, et al.,  
Defendant.

\_\_\_\_\_/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 24, 2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

James E. Williams V-54214  
D-5-103  
Kern Valley State Prison  
P.O. Box 5104  
Delano, CA 93216

Dated: September 24, 2014

Richard W. Wieking, Clerk  
By: Jackie Lynn Garcia, Deputy Clerk